

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1899.

No. 455.

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THE MUTUAL LIFE INSURANCE COMPANY OF NEW  
YORK, PETITIONER,

vs.

WALTER B. ALLEN, AS ADMINISTRATOR OF SAMUEL B.  
STEWART, DECEASED.

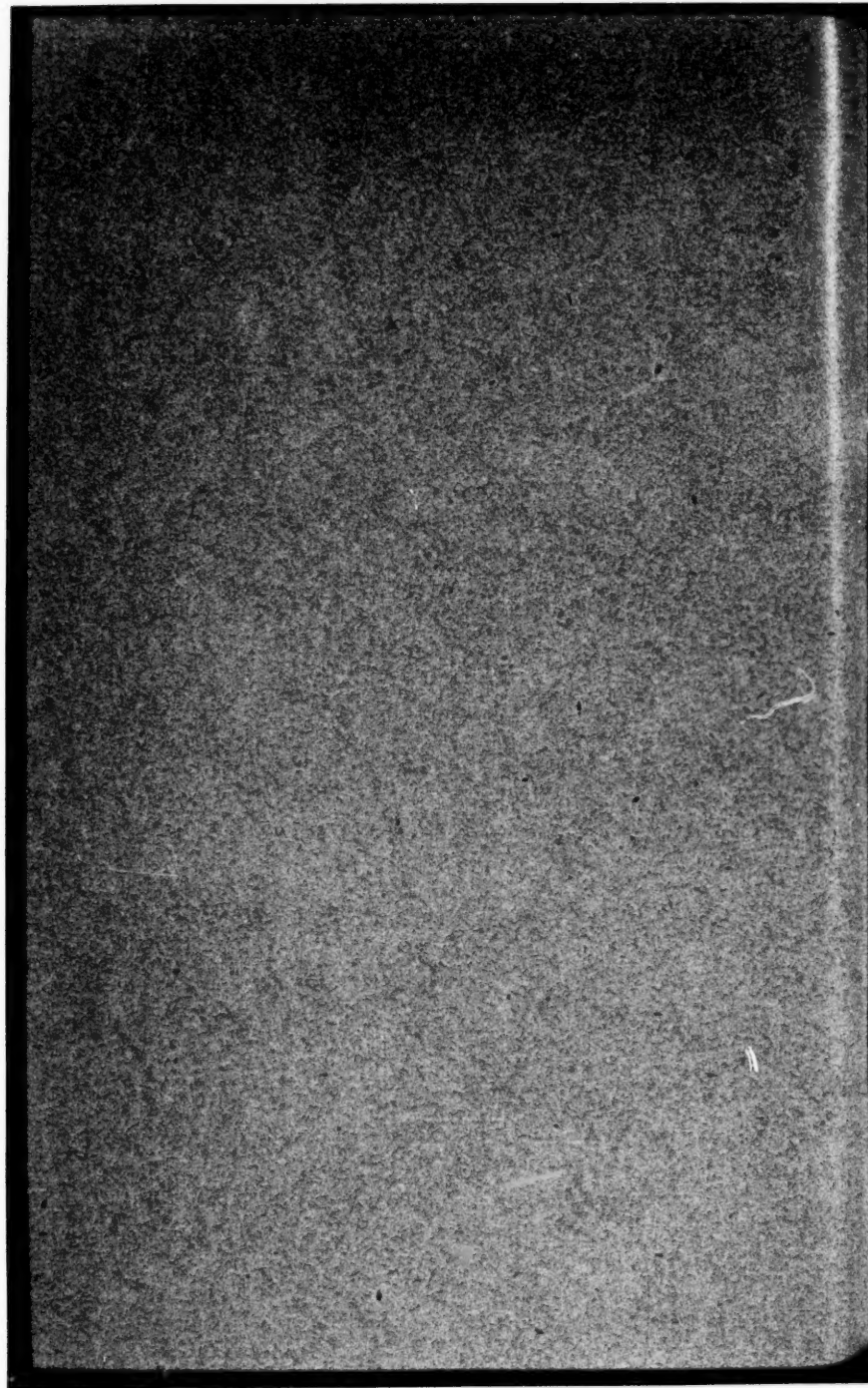
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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT.

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PETITION FOR CERTIORARI FILED NOVEMBER 24, 1899.  
CERTIORARI AND RETURN FILED MAR 10 1900

(17,569.)



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SUPREME COURT OF THE UNITED STATES.

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*v.s.*

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STEWART, DECEASED.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT.

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1 In the United States Circuit Court of Appeals for the Ninth Circuit.

|  |          |
|--|----------|
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK<br>(a Corporation), Plaintiff in Error,                  | } No. —. |
| <i>vs.</i>   |          |
| WALTER B. ALLEN, as Administrator of the Estate of<br>Samuel B. Stewart, Deceased, Defendant in Error. |          |

*Order Enlarging Time To File Clerk's Return and Docket Cause.*

Now on this fifteenth day of February, 1899, upon the application of Messrs. Struve, Allen, Hughes & McMicken, attorneys for plaintiff in error above named, and good and sufficient cause being shown and appearing therefor, it is ordered by the court that the time within which the clerk of the circuit court of the United States for the district of Washington shall make, transmit to, and file with, the clerk of the United States circuit court of appeals for the ninth circuit his return of the writ of error and copy of the record in the above-entitled cause, be, and the same is hereby, extended thirty days from the return day of said writ of error and the citation herein, to wit, thirty days from the twenty-first day of February, 1899, and that the time within which said plaintiff in error

2 shall docket said cause and file the record thereof with the clerk of said circuit court of appeals be and the same is hereby extended for the time above named.

C. H. HANFORD,

*United States District Judge for the District of Washington,  
Sitting as Judge of said Circuit Court of the United States,  
and the Judge Who Allowed said Writ of Error and  
Signed said Citation.*

(Endorsed:) (Original.) No. 519. In the United States circuit court of appeals for the ninth circuit. The Mutual Life Insurance Company of New York, plaintiff in error, *vs.* Walter B. Allen, as administrator of the estate of Samuel B. Stewart (deceased), defendant in error. Order enlarging time to file clerk's return and docket cause. Filed February 20, 1899. F. D. Monckton, clerk. Struve, Allen, Hughes & McMicken, for plaintiff in error, 520 Bailey building, Seattle, Wash.

In the Circuit Court of the United States, District of Washington,  
Northern Division.

|  |   |
|--|---|
| WALTER B. ALLEN, as Administrator of the Estate of Samuel B. Stewart, Deceased, Plaintiff, | } |
| vs.  |   |
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a Corporation), Defendant.                  |   |

3

*Complaint.*

The plaintiff complains of the defendant, and for a first cause of action alleges:

I.

That during all the times herein stated the defendant was and is now a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in said State, and legally doing business in this State.

II.

That prior to the eighteenth day of February, 1893, one Samuel B. Stewart applied to the defendant for insurance upon his life, and thereafter, on the eighteenth day of February, 1893, the said defendant accepted said application, and on said day did enter into a contract of insurance with the said Samuel B. Stewart, and did issue and deliver to him, the said Samuel B. Stewart, a policy of insurance upon his life, which said contract of insurance and policy of insurance was in the words and figures following, to wit:

No. 543,104.

Man's life.

Twenty-year distribution policy.

Mutual Life Insurance Company of New York.

Age, 22 years.

Amount, \$2,500.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office in the city of New York, unto Samuel B. Stewart, of Seattle, in the county of King, State of Washington, his executors, administrators, or assigns, twenty-five hundred dollars, upon acceptance of satisfactory proofs at its home office of the death of said Samuel B. Stewart during the continuance of this policy, upon the following conditions, and subject to the provisions, requirements, and benefits stated on the back of this policy, which are hereby referred to and made a part hereof:

Annual premium, \$47.75.

The annual premium of forty-seven dollars and seventy-five cents shall be paid in advance on the delivery of this policy, and

thereafter to the company, at its home office in the city of New York, on the eighteenth day of February in every year during the continuance of this contract.

In witness whereof, the said Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary at its office in the city of New York, the eighteenth day of February, A. D. one thousand eight hundred and ninety-three.

RICHARD McCURDY, *President*.

C. F. SCHRODER, *Ass't Secretary*.

The receipt of the first payment of premium hereon is acknowledged.

W. J. EASTON, *Secretary*.

*Provisions, Requirements, and Benefits.*

Payment of premiums.—Each premium is due and payable at the home office of the company in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy, is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company, except as hereinafter provided.

Dividends—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus; and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years; otherwise, a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years, elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.



**Paid-up policy.**—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chapter 347, Laws of the State of New York.

**Surrender for cash value.**—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality, and four per cent. interest, and the surplus as defined above, will be paid therefor in cash.

**Surrender for life income.**—Or if this policy be surrendered as above provided, the total cash value may, at the option of the policy-holder, be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

**Insurance with annuity.**—If the policy be surrendered at the end of the first dividend period as above provided, the company will, if requested in writing, apply its cash value, including surplus,  
7 or any part of such value, to purchase without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance, payments of the annuity to commence one year after the end of said first dividend period.

**Incontestability.**—It is hereby further agreed and promised that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age, and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

**Notice to the holder of this policy.**—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise or by receiving any representation or information not contained in the application for this policy.

**Assignments.**—The company declines to notice any assignment of this policy until the original assignment, or a duplicate or certified copy thereof, shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.



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38 B.

Man's life. Twenty-year dist., Aug., 1891.

It is hereby mutually understood and agreed that as the within Samuel B. Stewart has not been successfully vaccinated, he is not insured under this policy as against death in consequence of varioloid or variola.

Income life.

No. 543,104.

The Mutual Insurance Company of New York.—Insurance on the life of Samuel B. Stewart. Amount, \$2,500. Date, Feb. 18, 1893. Term of life. Annual premium, \$47.75.

### III.

That in the application made by the said Samuel B. Stewart for said policy, which said application is by the terms of said policy made a part thereof, it was stated that the said policy of insurance was to be issued under and by virtue of and subject to the provisions of the laws of the State of New York, and said contract of insurance and policy was made and issued under and by virtue of and subject to the laws of the State of New York.

### IV.

That the said Samuel B. Stewart did, at the time of the issuance and deliverance to him of the said policy, pay to the said defendant the annual premium thereon, to wit, did pay the sum of forty-seven and seventy-five one-hundredths (\$47.75) in cash.

### V.

That on the ninth day of July, 1897, the said Samuel B. Stewart died intestate.

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### VI.

That the death of the said Samuel B. Stewart was not caused, nor did he die in consequence of, nor was he afflicted with or by varioloid or variola.

### VII.

That he, the said Samuel B. Stewart did, during his lifetime, do and perform all agreements which, under said policy of insurance, he was obligated to do and perform.

### VIII.

That subsequent to the death of the said Samuel B. Stewart, to wit, on or about the — day of August, 1897, certain proceedings were taken in the superior court of King county, State of Washington, a court of general jurisdiction, for the purpose of having an administrator appointed of the estate of Samuel B. Stewart; that

certain proceedings were had in said matter to the end that on the twenty-eighth day of August, 1897, the plaintiff herein, Walter B. Allen, was duly and regularly appointed administrator of the estate of the said Samuel B. Stewart, and on said day letters of administration were duly and regularly issued to him, the said Walter B. Allen, the plaintiff, as such administrator. That said superior court then and there had full and complete jurisdiction of said matter.

### IX.

That immediately thereafter, to wit, on the twenty-eighth day of August, 1897, the said plaintiff, Walter B. Allen, did duly  
10 qualify as administrator, and has been ever since said time, and is now, the duly appointed, qualified, and acting administrator of said estate.

### X.

That the said plaintiff Walter B. Allen is a citizen and resident of the State of Washington.

### XI.

That he, the said Walter B. Allen, on or about the fifteenth day of September, 1897, made due proofs of death of the said Samuel B. Stewart, and did furnish and deliver the same to the said defendant; that the said defendant received said proofs of death and of loss, and has made no objection thereto.

### XII.

That thereafter the plaintiff demanded payment from the said defendant of the amount due under said policy, which said demand the said defendant refused to grant.

### XIII.

That the said plaintiff has done and performed all acts and things necessary to be done and performed by him under and by virtue of said policy and contract of insurance.

And for a further and second cause of action the plaintiff alleges:

### I.

That during all the times herein stated the defendant was and is now a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in said State, and legally doing business in this State.

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### II.

That prior to the eighteenth day of February, 1893, one Samuel B. Stewart applied to the defendant for insurance upon his life, and thereafter, on the eighteenth day of February, 1893, the said defendant accepted said application, and on said day did enter into a contract of insurance with the said Samuel B. Stewart, and did issue

and deliver to him, the said Samuel B. Stewart, a policy of insurance upon his life, which said contract of insurance was in the words and figures following, to wit:

No. 54106.

Man's life, limited payment.

*Twenty-year Distribution Policy.*

Mutual Life Insurance Company of New York.

Age, 22 years.

Amount, \$2,500.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office in the city of New York, unto Samuel B. Stewart, of Seattle, in the county of King, State of Washington, his executors, administrators, or assigns, twenty-five hundred dollars, upon acceptance of satisfactory proof at its home office of the death of said Samuel B. Stewart during the continuance of this policy, upon the following conditions, and subject to the provisions, requirements, and benefits stated on the back of this policy, which are hereby referred to and made a part hereof:

Annual premium for twenty years, \$60.50.

12 The annual premium of sixty-six dollars and fifty cents shall be paid in advance on the delivery of this policy, and thereafter, to the company at its home office in the city of New York, on the eighteenth day of February in every year during the continuance of this contract until premiums for twenty full years shall have been duly paid to said company.

In witness whereof, the said Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary at its office in the city of New York, the eighteenth day of February, A. D. one thousand eight hundred and ninety-three.

RICHARD McCURDY, *President.*

The receipt of the first payment of premium hereon is acknowledged.

W. J. EASTON, *Secretary.*

*Provisions, Requirements, and Benefits.*

Payment of premiums.—Each premium is due and payable at the home office of the company in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy, is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall

13 be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments

previously made shall be forfeited to the company, except as hereinafter provided.

**Dividends.**—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus; and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase additional insurance, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years; otherwise, a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years, elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.

**Paid-up policy.**—After three full annual premiums have  
14 been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for paid-up insurance, payable as herein provided, for the proportion of the amount of this policy which the number of full year's premium paid bears to the total number required.

**Surrender.**—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality, and four per cent. interest and the surplus as defined above will be paid therefor in cash.

**Insurance with annuity.**—If the policy be surrendered at the end of the first dividend period as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance, payments of the annuity to commence one year after the end of said first dividend period.

**Incontestability.**—It is hereby further agreed and promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the man-

ner stipulated in said policy, and that the requirements of the company as to age, and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise or by receiving any representation or information not contained in the application for this policy.

Assignments.—The company declines to notice any assignment of this policy until the original assignment, or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

### 39 B.

Man's life, lim. payment. Twenty-year dist., June, 1889.

It is hereby mutually agreed and understood that as the within-named Samuel B. Stewart has not been successfully vaccinated, he is not insured under this policy as against death in consequence of varioloid or variola.

The policy is indorsed as follows :

Income life.

Limited payment.

No. 543,106.

The Mutual Life Insurance Company of New York.—Insurance on the life of Samuel B. Stewart. Amount, \$2,500. Date, February 18, 1893. Term of life. Annual premium for twenty years, \$66.50.

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### III.

That in the application made by the said Samuel B. Stewart for said policy, which said application is by the terms of said policy made a part thereof, it was stated that the said policy of insurance was to be issued under and by virtue and subject to the provisions of the laws of the State of New York, and said contract of insurance and policy was made and issued under and by virtue of and subject to the laws of the State of New York.

### IV.

That the said Samuel B. Stewart did, at the time of the issuance and deliverance to him of the said policy, pay to the said defendant the annual premium thereon, to wit, did pay the sum of sixty-six and fifty one-hundredths (\$66.50) dollars in cash.

## V.

That on the ninth day of July, 1897, the said Samuel B. Stewart died intestate.

## VI.

That the death of the said Samuel B. Stewart was not caused, nor did he die in consequence of, nor was he afflicted with or by varioloid or variola.

## VII.

That he, the said Samuel B. Stewart did, during his lifetime, do and perform all agreements which, under said policy of insurance, he was obligated to do and perform.

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## VIII.

That subsequent to the death of the said Samuel B. Stewart, to wit, on or about the — day of August, 1897, certain proceedings were taken in the superior court of King county, State of Washington, a court of general jurisdiction, for the purpose of having an administrator appointed of the estate of Samuel B. Stewart; that certain proceedings were had in said matter to the end that on the twenty-eighth day of August, 1897, the plaintiff herein, Walter B. Allen, was duly and regularly appointed administrator of the estate of the said Samuel B. Stewart, and on said day letters of administration were duly and regularly issued to him, the said Walter B. Allen, the plaintiff, as such administrator; that said superior court then and there had full and complete jurisdiction over all of said matter.

## IX.

That immediately thereafter, to wit, on the twenty-eighth day of August, 1897, the said Walter B. Allen did duly qualify as administrator, and has been ever since said time, and is now, the duly appointed, qualified, and acting administrator of said estate.

## X.

That the said plaintiff Walter B. Allen is a citizen and resident of the State of Washington.

## XI.

That he, the said Walter B. Allen, on or about the fifteenth day of September, 1897, made due proofs of death of the said Samuel B. Stewart, and did furnish and deliver the same to the said defendant; that the said defendant received said proofs of death and of loss, and has made no objection thereto.

## XII.

That thereafter, the plaintiff demanded of the said defendant payment of the amount due under said policy, which said demand the said defendant refused to grant.

## XIII.

That the said plaintiff has done and performed all acts and things necessary to be done and performed by him under and by virtue of said policy and contract of insurance.

Wherefore, plaintiff prays judgment against the defendant in the sum of five thousand (\$5,000.00) dollars, together with interest thereon from the ninth day of July, 1897, and the costs and disbursements of this action.

ALLEN & ALLEN,  
*Attorneys for Plaintiff.*

STATE OF WASHINGTON, } ss:  
*County of King,*

Walter B. Allen, being first duly sworn, upon his oath says that he is the plaintiff in the above-entitled action; that he has heard the foregoing complaint read, knows the contents thereof, and that the same is true.

WALTER B. ALLEN.

19 Subscribed and sworn to before me this twenty-third day  
of December, 1897.

JAY C. ALLEN,  
[NOTARIAL SEAL.] *Notary Public in and for the State of  
Washington, Residing at Seattle.*

(Endorsed :) Complaint. Filed Dec. 28, 1897, in the United States circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

United States Circuit Court for the District of Washington.

|  |            |
|--|------------|
| WALTER B. ALLEN, Administrator, Plaintiff,               | } No. 654. |
| <i>vs.</i>   |            |
| MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,<br>Defendant. |            |

*Præcipe for Appearance of Attorneys for Plaintiff.*

To the clerk of the above-entitled court :

You will please enter our appearance as attorneys for plaintiff in the above-entitled cause.

ALLEN & ALLEN,  
*Attorneys-at-law, 43-47 Dexter, Horton & Co.'s  
Bank Bldg., Seattle.*

(Endorsed :) Præcipe for appearance. Filed Dec. 28, 1897. A. Reeves Ayres, clerk. A. N. Moore, deputy clerk.



20 United States Circuit Court for the District of Washington.

|   |            |
|---|------------|
| WALTER B. ALLEN, as Administrator of the Estate of )<br>Samuel B. Stewart, Plaintiff, | } No. 654. |
| vs.   |            |
| MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, )<br>Defendant.                            |            |

*Præcipe for Appearance of Attorneys for Defendant.*

To the clerk of the above-entitled court:

You will please enter our appearance as attorneys for defendant in the above-entitled cause.

STRUVE, ALLEN, HUGHES & McMICKEN AND  
STRUDWICK & PETERS.

(Endorsed:) Præcipe for appearance. Filed January 29, 1898.  
A. Reeves Ayres, clerk. H. M. Walthew, deputy.

21 In the Circuit Court of the United States for the District of  
Washington, Northern Division.

|   |            |
|---|------------|
| WALTER B. ALLEN, as Administrator of the Estate of )<br>Samuel B. Stewart, Plaintiff, | } No. 654. |
| vs.   |            |
| MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a )<br>Corporation), Defendant.            |            |

*Answer.*

The above-named defendant, Mutual Life Insurance Company of New York (a corporation), makes answer to the first cause of action in the plaintiff's complaint set forth as follows:

I.

For answer to paragraph two of said first cause of action, defendant admits that prior to the eighteenth day of February, 1893, the said Samuel B. Stewart applied to defendant for insurance upon his life, and that thereafter the defendant accepted said application, but denies that it accepted the same on the eighteenth day of February or prior to the first day of March, 1893, and denies that it entered into said contract for the insurance with the said Samuel B. Stewart, or delivered to him prior to the first day of March, 1893, a policy of insurance upon his life.

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II.

For answer to paragraph three of said first cause of action, defendant admits that said application by its terms was made a part of said policy, but denies each and every other allegation in said paragraph three contained.

## III.

For answer to paragraph four of said first cause of action, defendant admits that at the time of the deliverance to the said Samuel B. Stewart of the said policy of insurance, the said Stewart paid to the defendant the annual premium thereon, to wit, forty-seven dollars and seventy-five cents (\$47.75), in cash, but denies each and every allegation in said paragraph contained.

## IV.

For answer to paragraph seven, defendant denies the same and each and every allegation therein contained.

## V.

For answer to paragraph thirteen of said first cause of action, defendant denies the same and each and every allegation therein contained.

Defendant makes answer to the second cause of action set forth in said complaint, as follows:

## I.

For answer to paragraph two, defendant admits that prior to the eighteenth day of February, 1893, the said Samuel B. Stewart applied to the defendant for insurance upon his life, and thereafter defendant accepted said application and entered into a contract of insurance with the said Samuel B. Stewart and issued and delivered to him policy of insurance upon his life, but defendant denies that the same was delivered to said Samuel B. Stewart prior to the first day of March, 1893.

## II.

For answer to paragraph three of said second cause of action, defendant admits that the application therein named was by its terms made a part of said policy of contract of insurance, but denies each and every other allegation in said paragraph three contained.

## III.

For answer to paragraph four, defendant admits that the said Samuel B. Stewart did at the time of the deliverance to him of the said policy, pay the defendant the annual premium thereon in the sum of sixty-six dollars and fifty cents (\$66.50), but denies each and every other allegation in said paragraph contained.

## IV.

For answer to paragraph seven, defendant denies the same and each and every allegation therein contained.

## V.

For answer to paragraph thirteen, defendant denies the same and each and every allegation therein contained.

And by way of a first and affirmative defense to the first cause of action in said complaint set forth, this defendant alleges :

## I.

That the defendant is and at all the times mentioned in the said complaint was a corporation, created, organized, and existing  
 24 under and by virtue of the laws of the State of New York, and is and was at all said times engaged in transacting a life-insurance business in the State of Washington, under and by virtue of and in pursuance of the laws of the State of Washington, and having its principal place of business for the transaction of business in said State at the city of Seattle.

## II.

That on the seventeenth day of February, 1893, one Samuel B. Stewart, the decedent in the complaint mentioned, who was then and there and for several years subsequent thereto, a citizen and resident of the State of Washington, made, signed and delivered to this defendant, at its office in the city of Seattle, State of Washington, his written application to defendant for a policy of insurance upon his life, in the sum of twenty-five hundred dollars (\$2,500), which application became and was, pursuant to its terms, and the terms of the policy hereinafter mentioned, a part of said policy and of the contract of insurance evidenced thereby.

## III.

That the said application contains among other things a stipulation and condition to the effect that the policy to be issued by the defendant pursuant to said application " shall not take effect until the first premium shall have been paid and the policy shall have been delivered during my continuance in good health."

## IV.

That thereupon the agent of the defendant in said city of  
 25 Seattle transmitted said application of the said Samuel B. Stewart to the general agent of the defendant in San Francisco, California, by whom said application was transmitted to the defendant in the city and county of New York, State of New York. That thereafter the defendant, pursuant to the said application, issued its policy of insurance upon the life of the said Samuel B. Stewart, being the policy mentioned in plaintiff's first cause of action, and caused the same to be transmitted to its said general agent in San Francisco, California, and thereafter the said agent of defendant in San Francisco, California, caused the said policy to be sent and transmitted to the agent of defendant in the city of Seattle in the State of Washington, to be there delivered upon payment of the first premium in said policy provided by the said Samuel B. Stewart, and that at the city of Seattle aforesaid the said agent of defendant did receive from the said Samuel B. Stewart payment of the said first annual pre-

mium, and did then and there deliver the said policy of insurance to the said Samuel B. Stewart, and by the terms thereof the said policy then and there took effect and became obligatory upon the parties thereto.

## V.

That it was provided in said policy that an annual premium of forty-seven dollars and seventy-five cents (\$47.75) should be paid in advance on the delivery of said policy, and thereafter on the eighteenth day of February in every year during the continuance of said contract or policy of insurance, and it is also in said policy provided as follows: "Notice that each and every payment is due on the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice required by any statute is thereby expressly waived. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided."

## VI.

That pursuant to the conditions of the said policy aforesaid, there became and was due to the defendant as a premium upon said policy of insurance, on the eighteenth day of February, 1894, the sum of \$47.75, and that the said Samuel B. Stewart neglected and refused to pay the said premium of \$47.75, or any part thereof, and ever since and up to the time of the death of said Samuel B. Stewart he had failed, neglected and refused to pay the said defendant the said premium or any part thereof, or any sum or other thing of value whatever, and by reason thereof the said policy of insurance became on the eighteenth day of February, 1894, according to the conditions thereof, void and of no effect, and the same then and there became and was forfeited and lapsed; that there has never been paid or tendered to defendant the whole or any part of any premium on said policy of insurance, save and except the sum of \$47.75, the first annual premium thereon, paid as aforesaid on the delivery of the said policy.

And by way of a further and second affirmative defense to said first cause of action, defendant alleges:

27

## I.

That the defendant is, and at all times mentioned in the complaint was, a corporation created, organized and existing under and by virtue of the laws of the State of New York, and is and was at all times engaged in transacting a life-insurance business in the State of Washington, under and by virtue of and in pursuance of the laws of the State of Washington, and having its principal place of business for the transaction of business in said State, at the city of Seattle.

## II.

That prior to the eighteenth day of February, 1893, one Samuel B. Stewart (deceased in said complaint mentioned), who then and

there was, and for several years thereafter continued to be, a citizen and resident of the State of Washington, made, signed and delivered to this defendant, at its office in the city of Seattle, State of Washington, his written application to defendant for a policy of insurance upon his life, in the sum of twenty-five hundred dollars (\$2,500), which application became and was, pursuant to its own terms, and the terms of the policy hereinafter mentioned, a part of such policy and of the contract of insurance evidenced thereby.

## III.

That the said application contains among other things a stipulation and condition to the effect that the policy to be issued by the defendant pursuant thereto "shall not take effect until the first premium shall have been paid and the policy shall have been delivered."

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## IV.

That thereupon the agent of the defendant in said city of Seattle transmitted said policy of said Samuel B. Stewart to the general agent of defendant in San Francisco, California, by whom said application was transmitted to this defendant in the city and State of New York. That thereafter the defendant, pursuant to the said application, issued its policy of insurance mentioned in plaintiff's first cause of action upon the life of the said Samuel B. Stewart, and transmitted the same to its said agent in San Francisco, California, and thereafter the said agent of the defendant at San Francisco caused the said policy to be transmitted to the agent of defendant in the city of Seattle aforesaid, to be there delivered to said Samuel B. Stewart upon payment of the first premium in said policy provided, and that at the said city of Seattle the said agent did receive from the said Samuel B. Stewart payment in cash of said premium, to wit, forty-seven dollars and seventy-five cents (\$47.75), and did then and there deliver the said policy to said Samuel B. Stewart, and by the terms thereof the said policy took effect and became obligatory upon the said parties thereto.

## V.

That it was provided in said policy of insurance as one of the conditions thereof that "An annual premium of forty-seven dollars and seventy-five cents (\$47.75) shall be paid in advance on the delivery of said policy, and thereafter on the eighteenth day of February in every succeeding year during the continuance of said policy," and it was also provided in said policy of insurance, as one of the conditions thereof, as follows: "Each premium is due and payable at the home office of the company, in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice required by any statute is thereby expressly waived. That part of the year's pre-

29

mium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided."

## VI.

That neither the said Samuel B. Stewart nor any one on his behalf ever paid, or offered to pay, any premium or any part of any premium due or to become due or payable on said policy, save and except the first premium, which was paid upon the delivery of said policy, and which covered the period from the date of said policy until the eighteenth day of February, 1894. That the said Samuel B. Stewart was at all times advised and informed that default had been made by him in the payment of each and every premium and the whole thereof due on said policy, subsequent to the said first annual premium paid at the delivery of said policy; and that the

30     said Samuel B. Stewart in his lifetime never paid or offered to pay any premium, or any part of any premium, due upon said policy subsequent to that paid upon the delivery thereof as aforesaid. That it was expressly in said policy provided that the insurance thereon was payable to the insured, Samuel B. Stewart, or his assigns; that the said Samuel B. Stewart never made any transfer or assignment of said policy of insurance; that the said defendant entered and noted said policy of insurance upon its books as forfeited and lapsed for failure to pay the annual premium falling due on said policy on said eighteenth day of February, 1894. That the said Samuel B. Stewart was at all times advised that defendant had so treated said policy as lapsed and forfeited, and notwithstanding said notice and notwithstanding the said Samuel B. Stewart was at all times advised he had not paid the premium due on said policy February 18, 1894, consented to the forfeiture and termination of said policy of insurance; and, with a mutual knowledge and understanding on the part of defendant and said Samuel B. Stewart, the said policy was at all times by the said parties deemed terminated from and after the eighteenth day of February, 1894; and relying upon such knowledge and mutual understanding, the said defendant never subsequently mailed or served any notice of the due date of premiums to or upon said Samuel B. Stewart during his lifetime, and the said Samuel B. Stewart, at all times knowing that defendant was treating said policy as forfeited and lapsed, and at all times knowing that he had not paid or tendered payment of any premium upon said policy subsequent to the first annual premium paid as aforesaid on the delivery of said policy,

31     acquiesced in and agreed to the said mutual understanding that the said policy was lapsed and forfeited, and by mutual agreement and consent, both the said defendant and said Samuel B. Stewart agreed and consented to the lapsing and forfeiture of said policy of insurance from and after the eighteenth day of February, 1894.

And by way of a first separate and affirmative defense to the second cause of action in the complaint pleaded, defendant alleges :

## I.

That the defendant is, and at all the times mentioned in the said complaint was, a corporation, created, organized and existing under and by virtue of the laws of the State of New York, and is and was at all said times engaged in transacting a life-insurance business in the State of Washington, under and by virtue of and in pursuance of the laws of the State of Washington, and having its principal place of business for the transaction of business in said State at the city of Seattle.

## II.

That on the seventeenth day of February, 1893, one Samuel B. Stewart, the decedent in the complaint mentioned, who was then and there and for several years subsequent thereto a citizen and resident of the State of Washington, made, signed and delivered to this defendant, at its office in the city of Seattle, State of Washington, his written application to defendant for a policy of insurance upon his life, in the sum of twenty-five hundred dollars (\$2,500), which application became and was, pursuant to its terms, and the

32 terms of the policy hereinafter mentioned, a part of said policy and of the contract of insurance evidenced thereby.

## III.

That the said application contains, among other things, a stipulation and condition to the effect that the policy to be issued by the defendant, pursuant to said application, "shall not take effect until the first premium shall have been paid and the policy shall have been delivered during my continuance in good health."

## IV.

That thereupon the agent of the defendant in said city of Seattle transmitted said application of the said Samuel B. Stewart to the general agent of the defendant in San Francisco, California, by whom said application was transmitted to the defendant in the city and county of New York, State of New York. That thereafter the defendant, pursuant to the said application, issued its policy of insurance upon the life of the said Samuel B. Stewart, being the policy mentioned in plaintiff's second cause of action, and caused the same to be transmitted to its said general agent in San Francisco, California, and thereafter the said agent of defendant in San Francisco, California, caused the said policy to be sent and transmitted to the agent of defendant in the city of Seattle in the State of Washington, to be there delivered upon payment of the first premium in said policy provided by the said Samuel B. Stewart, and that at the city of Seattle aforesaid the said agent of defendant did receive from the

33 said Samuel B. Stewart payment of the first annual premium, and did then and there deliver the said policy of insurance to the said Samuel B. Stewart, and by the terms thereof the



said policy then and there took effect and became obligatory upon the parties thereto.

## V.

That it was provided in said policy that an annual premium of sixty-six dollars and fifty cents (\$66.50) shall be paid in advance on the delivery of said policy and thereafter on the eighteenth day of February in every year during the continuance of said contract or policy of insurance and it is also in said policy, provided as follows : " Notice that each and every payment is due on the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice required by any statute is thereby expressly waived. If this policy shall become void by non-payment of premium all payments previously made shall be forfeited to the company except as hereinafter provided."

## VI.

That pursuant to the conditions of the said policy aforesaid, there became and was due to the defendant as a premium upon said policy of insurance, on the eighteenth day of February, 1894, the sum of \$66.50, and that the said Samuel B. Stewart neglected and refused to pay the said premium of \$66.50, or any part thereof, and ever since and up to the time of the death of said Samuel B. Stewart he had failed, neglected and refused to pay the said defendant the said premium or any part thereof, or any sum or other thing of value whatever, and by reason thereof the said policy of insurance became on the eighteenth day of February, 1894, according to the conditions thereof, void and of no effect, and the same then and there became and was forfeited and lapsed ; that there has never been paid or tendered to defendant the whole or any part of any premium on said policy of insurance save and except the sum of \$66.50, the first annual premium thereon, paid as aforesaid on the delivery of the said policy.

And for a further and second affirmative defense to the second cause of action in the complaint set forth, defendant alleges :

## I.

That the defendant is, and at all the times mentioned in the complaint was, a corporation, created, organized and existing under and by virtue of the laws of the State of New York, and is and was at all times engaged in transacting a life-insurance business in the State of Washington, under and by virtue of and in pursuance of the laws of the State of Washington, and having its principal place of business for the transaction of business in said State, at the city of Seattle.

## II.

That prior to the eighteenth day of February, 1893, one Samuel B. Stewart (deceased in said complaint mentioned), who then and there was, and for several years thereafter continued to be, a citizen

and resident of the State of Washington, made, signed and delivered to this defendant, at its office in the city of Seattle, State of Washington, his written application to defendant for a policy of insurance upon his life, in the sum of twenty-five hundred dollars (\$2,500), which application became and was, pursuant to its own terms and the terms of the policy hereinafter mentioned, a part of such policy and of the contract of insurance evidenced thereby.

### III.

That the said application contains, among other things, a stipulation and condition to the effect that the policy to be issued by the defendant pursuant thereto "shall not take effect until the first premium shall have been paid and the policy shall have been delivered."

### IV.

That thereupon the agent of the defendant in said city of Seattle transmitted said policy of said Samuel B. Stewart to the general agent of defendant in San Francisco, California, by whom said application was transmitted to this defendant in the city and State of New York. That thereafter the defendant, pursuant to the said application, issued its policy of insurance mentioned in plaintiff's second cause of action upon the life of the said Samuel B. Stewart and transmitted the same to its said agent in San Francisco, California, and thereafter the said agent of defendant at San Francisco caused the said policy to be transmitted to the agent of defendant in the city of Seattle aforesaid, to be there delivered to said Samuel B. Stewart upon payment of the first premium in said policy provided, and that at the said city of Seattle the said agent did receive from the said Samuel B. Stewart payment in cash of said premium, to wit, sixty-six dollars and fifty cents (\$66.50), and did then and there deliver the said policy to said Samuel B. Stewart and by the terms thereof the said policy took effect and became obligatory upon the said parties thereto.

### V.

That it was provided in said policy of insurance as one of the conditions thereof that "An annual premium of sixty-six dollars and fifty cents (\$66.50) shall be paid in advance on the delivery of said policy, and thereafter on the eighteenth day of February in every succeeding year during the continuance of said policy," and it was also provided in said policy of insurance, as one of the conditions thereof, as follows: "Each premium is due and payable at the home office of the company, in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due

and is unpaid at the maturity of this contract, shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided."

## VI.

That neither the said Samuel B. Stewart nor any one on his behalf ever paid or offered to pay any premium, or any part of any premium due, or to become due or payable on said policy, save and except the first premium, which was paid upon the delivery  
37 of said policy, and which covered the period from the date of said policy until the eighteenth day of February, 1894.

That the said Samuel B. Stewart was at all times advised and informed that default had been made by him in the payment of each and every premium and the whole thereof due on said policy, subsequent to the said first annual premium paid at the delivery of said policy; and that the said Samuel B. Stewart in his lifetime never paid or offered to pay any premium, or any part of any premium, due upon said policy subsequent to that paid upon the delivery thereof as aforesaid. That it was expressly in said policy provided that the insurance thereon was payable to the insured, Samuel B. Stewart, or his assigns; that the said Samuel B. Stewart never made any transfer or assignment of said policy of insurance; that the said defendant entered and noted said policy of insurance upon its books as forfeited and lapsed for failure to pay the annual premium falling due on said policy on said eighteenth day of February, 1894. That the said Samuel B. Stewart was at all times advised that defendant had so treated said policy as lapsed and forfeited, and notwithstanding said notice, and notwithstanding the said Samuel B. Stewart was at all times advised he had not paid the premium due on said policy, February 18, 1894, consented to the forfeiture and termination of said policy of insurance; and with a mutual knowledge and understanding on the part of defendant and said Samuel B. Stewart, the said policy was at all times by the said parties deemed terminated from and after the eighteenth day of

February, 1894; and relying upon such knowledge and mutual understanding, the said defendant never subsequently  
38 mailed or served any notice of the due date of premises to or upon said Samuel B. Stewart during his lifetime, and the said Samuel B. Stewart, at all times knowing that defendant was treating said policy as forfeited and lapsed, and at all times knowing that he had not paid or tendered payment of any premium upon said policy subsequent to the first annual premium paid as aforesaid on the delivery of said policy, acquiesced in and agreed to the said mutual understanding that the said policy was lapsed and forfeited, and by mutual agreement and consent, both the said defendant and said Samuel B. Stewart agreed and consented to the lapsing and forfeiture of said policy of insurance from and after the eighteenth day of February, 1894.

Wherefore, defendant prays that plaintiff take nothing by his

said action, and that defendant recover its costs and disbursements herein to be taxed.

STRUVE, ALLEN, HUGHES & McMICKEN AND  
STRUDWICK & PETERS,

*Attorneys for Defendant.*

STATE OF WASHINGTON, }  
County of King, } ss :

A. W. Engle, being first duly sworn, on oath deposes and says: That he is an agent of the defendant in the foregoing-entitled action, authorized by said defendant to solicit insurance in this State, and for that reason he makes this affidavit in verification of said answer, on behalf of said defendant; that he has read said answer, knows the contents thereof and believes the same to be true.

A. W. ENGLE.

39 Subscribed and sworn to before me this twenty-sixth day of January, 1898.

[NOTARIAL SEAL.] H. K. STRUVE,  
*Notary Public in and for the  
State of Washington, Residing  
at Seattle, in said State.*

Copy of within answer received and due service of same acknowledged this twenty-sixth day of January, 1898.

ALLEN & ALLEN,  
*Attorneys for Plaintiff.*

(Endorsed :) Answer. Filed Jan. 29, 1898, in the United States circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

In the Circuit Court of the United States, District of Washington, Northern Division.

WALTER B. ALLEN, as Administrator of the Estate of Samuel B. }  
Stewart, Deceased, Plaintiff, }

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a Corporation), Defendant. }

*Demurrer to Answer.*

40 Comes now the plaintiff, and demurs to the first affirmative defense contained in the answer of the defendant to the first cause of action, for the reason that said defense does not state facts sufficient to constitute a defense to said cause of action, or to any part thereof.

And the plaintiff further demurs to the first affirmative defense contained in the answer of the defendant to the second cause of action, for the reason that said separate and affirmative defense does not state facts sufficient to constitute a defense to the second cause of action, or to any part thereof.

ALLEN & ALLEN,  
*Attorneys for the Plaintiff.*

STATE OF WASHINGTON, } ss:  
 County of King, }

I, Jay C. Allen, one of the attorneys for the plaintiff herein, do hereby certify that, in my opinion, the above demurrer, and all thereof, is in point of law well taken.

JAY C. ALLEN.

We hereby acknowledge the receipt of a copy and service of the within demurrer, this ninth day of February, 1898.

STRUVE, ALLEN, HUGHES & McMICKEN,  
*Attorneys for Defendant.*

(Endorsed:) Demurrer to answer. Filed February 9, 1898, in the United States circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

41 In the Circuit Court of the United States for the District of Washington, Northern Division.

WALTER B. ALLEN, Administrator, }  
 vs.  
 MUTUAL LIFE INSURANCE Co. }

*Opinion.*

This action is founded upon two policies of insurance issued by an insurance company of the State of New York. Each policy provides for the payment of annual premiums at the home office of the company in the State of New York, and for performance of the contract at the same place. Each policy makes the application for insurance a part of the contract, and in the application it is recited that the contract is to be governed by the laws of the State of New York. The answer admits the policies as pleaded in the complaint, and admits that the first annual premiums were paid, and that each policy was delivered and took effect as a binding contract. The case therefore, comes within the rule laid down in the decision of this court in the case of *Phinney v. Mutual Life Insurance Co. of New York*. I adhere to the opinion expressed in that decision, and therefore sustain the demurrer to the first affirmative defenses pleaded in the answer as to each of the policies.

C. H. HANFORD, Judge.

(Endorsed:) Opinion. Filed May 28, 1898. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

42 In the United States Circuit Court for the District of Washington, Northern Division.

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|--|---|
| WALTER B. ALLEN, as Administrator of the Estate of Sam. B. Stewart, Plaintiff, | } |
| vs.  |   |
| MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a Corporation), Defendant.          |   |

*Demurrer to Second Affirmative Defense.*

Comes now the plaintiff and demurs to the second affirmative defense interposed by the defendant to the first cause of action upon the ground and for the reason that said second affirmative defense does not state facts sufficient to constitute a defense to said first cause of action.

And the plaintiff further demurs to the second affirmative defense contained in the answer of the defendant to the second cause of action upon the ground, and for the reason that said second affirmative defense does not state facts sufficient to constitute a defense to said second cause of action.

ALLEN & ALLEN,  
*Attorneys for Plaintiff.*

STATE OF WASHINGTON, } ss.  
County of King,

I, Jay C. Allen, one of the attorneys for the plaintiff herein, do hereby certify that in my opinion the above demurrer and all thereof, is in point of law well taken.

JAY C. ALLEN.

43 We hereby acknowledge the receipt of a copy and service of the within demurrer this nineteenth day of December, 1898.

STRUVE, ALLEN, HUGHES & McMICKEN,  
*Attorneys for Defendant.*

(Endorsed:) Demurrer. Filed Dec. 22, 1898, in the United States circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

In the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.

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|--|---|----------|
| WALTER B. ALLEN, as Administrator of the Estate of Samuel B. Stewart, Deceased, Plaintiff, | } | No. 654. |
| vs.  |   |          |
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW York (a Corporation), Defendant.                  |   |          |

*Judgment.*

This cause having been duly and regularly heard on the sixteenth day of May, 1898, upon the plaintiff's demurrer to the first

affirmative defense contained in the answer of the defendant to the alleged first cause of action in plaintiff's complaint herein and to the first affirmative defense contained in the answer of the defendant to the alleged second cause of action in plaintiff's complaint herein, and the court having heard the arguments of counsel thereon, and having taken the same under advisement, and afterward, on the twenty-eighth day of May, 1898, duly filed its opinion thereon;

And now, on this, the thirty-first day of December, 1898, the said cause coming on duly and regularly to be heard upon the said plaintiff's demurrer to the second affirmative defense contained in the answer of the defendant to the alleged first cause of action in plaintiff's complaint herein, and to the second affirmative defense contained in the answer of the defendant to the alleged second cause of action in plaintiff's complaint herein, and the court having heard the argument of counsel thereon, and having duly considered the same;

And the court now, on this thirty-first day of December, 1898, being fully advised in the premises, it is by the court ordered that said demurrers, and each of them to each and all of said affirmative defenses be, and the same hereby are, sustained; to which ruling of the court sustaining said demurrers and each of them as to each and all of said affirmative defenses, defendant by its counsel in open court at the time duly excepts, and its exception is separately allowed by the court as to each of said demurrers to all and each of said respective affirmative defenses and each of the grounds of said demurrers.

Thereupon the defendant, by its counsel in open court, announces that it does not desire to amend its said answer, or any of said affirmative defenses, but elects to stand thereon, and refuses to plead further. Whereupon the plaintiff, by its counsel moves the court for judgment in favor of said plaintiff and against the defendant upon said demurrers, and the court being now fully advised in the premises, grants said motion and orders judgment accordingly. To which action of the court in granting said motion for judgment and ordering judgment, defendant at the time excepts and its exception is allowed.

And the plaintiff having afterward, on said thirty-first day of December, 1898, filed in this court the policies of insurance sued on, from which it appears to the court that there was due on the ninth day of July, 1897, the sum of \$4,588.00, which sum should bear interest from that date at the rate of six per cent. per annum.

It is therefore considered, adjudged, and decreed that the plaintiff, Walter B. Allen, as administrator of the estate of Samuel B. Stewart, deceased, do have and recover of and from the Mutual Life Insurance Company of New York, the sum of five thousand and ninety one-hundredths dollars, with interest thereon from the date hereof at the rate of six per cent. per annum, together with the said plaintiff's costs herein, taxed at nineteen and ninety-six one-hundredths (\$19.96) dollars, and that execution issue therefor. To



which judgment and every part thereof defendant at the time excepts, and its exception is allowed.

Done in open court this thirty-first day of December, 1898.

C. H. HANFORD, *Judge*.

(Endorsed :) Judgment. Filed Dec. 31, 1898, in the United States circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

46 In the United States Circuit Court of Appeals for the Ninth Circuit.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK (a Corporation), Plaintiff in Error,

*vs.*

WALTER B. ALLEN, as Administrator of the Estate of Samuel B. Stewart, Deceased, Defendant in Error.

*Assignment of Errors.*

In the matter of the petition of The Mutual Life Insurance Company of New York, plaintiff in error.

Comes now the above-named plaintiff in error, The Mutual Life Insurance Company of New York, a corporation, on this twenty-fourth day of January, 1899, by its attorneys, Edward Lyman Short, Struve, Allen, Hughes & McMicken and Strudwick & Peters, and says that in the record and proceedings in the above-entitled action there is manifest error, of which it makes the following assignment of error, to wit:

I.

The circuit court of the United States for the district of Washington, northern division, erred in sustaining the demurrer of the plaintiff and defendant in error to the first affirmative answer and defense of defendant and plaintiff in error, The Mutual Life

47 Insurance Company of New York (a corporation), to the first cause of action in the complaint pleaded.

II.

The said circuit court erred in sustaining the demurrer of the said defendant in error and plaintiff to the second affirmative defense of said defendant and plaintiff in error to the first cause of action in said complaint pleaded.

III.

Said circuit court erred in sustaining the demurrer of the said plaintiff and defendant in error to the first affirmative defense of defendant and plaintiff in error to the second cause of action in the complaint set forth.

IV.

The said circuit court erred in sustaining the demurrer of the said plaintiff and defendant in error to the second affirmative answer and defense to the second cause of action in the complaint set forth

## V.

The said circuit court erred in sustaining the demurrer of said plaintiff and defendant in error to the answer of the defendant and plaintiff in error.

## VI.

The said circuit court erred in granting judgment in favor of the said plaintiff and defendant in error against the said defendant and plaintiff in error for the amount of said judgment, or any sum.

## VII.

48 Because it is manifest upon the issues formed in said cause that the said plaintiff was not entitled to judgment.

## VIII.

The said court erred in not submitting said cause to trial upon the issues formed by the pleading.

Wherefore, the said plaintiff in error prays that the judgment of the said circuit court of the United States for the district of Washington, northern division, be reversed, and that the said circuit court of the United States be ordered to enter an order reversing and setting aside said judgment and granting a new trial in said cause.

EDWARD LYMAN SHORT,  
STRUVE, ALLEN, HUGHES & McMICKEN, AND  
STRUDWICK & PETERS,

*Attorneys for Plaintiff in Error and Defendant.*

Copy of foregoing assignment of errors received and service of same acknowledged this twenty-fourth day of January, 1899.

ALLEN & ALLEN,

*Attorneys for Defendant in Error.*

(Endorsed :) Assignment of error. Filed Jan. 24, 1899, in the United States circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

49 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

WALTER B. ALLEN, as Administrator of the Estate of  
Samuel B. Stewart, Deceased, Plaintiff,

<sup>vs.</sup>

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK  
(a Corporation), Defendant.

No. 654.

*Petition for Order Allowing Writ of Error.*

Petition for order allowing writ of error.

The said defendant, The Mutual Life Insurance Company of New York (a corporation), feeling itself aggrieved by the judgment entered in said cause on the thirty-first day of December, 1898, in favor

of said plaintiff and against said defendant, for the sum of \$5,000.90, with interest thereon from the date of said judgment at the rate of six per cent. per annum together with said plaintiff's costs, taxed at nineteen and ninety-six one-hundredths dollars, and directing that execution issue therefor, in which judgment, and the proceedings leading up to the same, certain errors were committed to the prejudice of said defendant, which more fully appear from the assignment

50 of error which is filed herewith, comes and prays said court for an order allowing the said defendant to prosecute a writ of error to the honorable United States circuit court of appeals for the ninth circuit for the correction of the errors complained of, under and according to the laws of the United States in that behalf made and provided, and also prays that an order be made fixing the amount of security which the said defendant shall give upon said writ of error, and that upon the furnishing of said security all further proceedings in this cause be suspended and stayed until the determination of said writ of error by said circuit court of appeals for the ninth circuit. And further prays that a transcript of the record and proceedings and papers in this cause, duly authenticated, may be sent to the circuit court of appeals, and your petitioner will ever pray.

Dated this twenty-fourth day of January, 1899.

EDWARD LYMAN SHORT,  
STRUVE, ALLEN, HUGHES & McMICKEN, AND  
STRUDWICK & PETERS,

*Attorneys for the Defendant, The Mutual Life Insurance  
Company of New York, a Corporation.*

A copy of foregoing petition received and service of same acknowledged this twenty-fourth day of January, 1899.

ALLEN & ALLEN,  
*Attorneys for Plaintiff.*

(Endorsed :) Petition for order allowing writ of error. Filed Jan. 24, 1899, in the United States circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

51 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

|  |   |          |
|--|---|----------|
| WALTER B. ALLEN, as Administrator of the Estate of | } | No. 654. |
| Samuel B. Stewart, Deceased, Plaintiff,            |   |          |
| vs.  |   |          |
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,     | } |          |
| (a Corporation), Defendant.                        |   |          |

*Order Granting Writ of Error and Fixing Amount of Bond.*

This cause coming on this day to be heard in the court-room of said court in the city of Seattle, Wash., upon the petition of the defendant, The Mutual Life Insurance Company of New York (a corporation), herein filed, praying the allowance of a writ of error

to the United States circuit court of appeals for the ninth circuit, together with the assignment of errors, also herein filed, in due time, and also praying that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the said United States circuit court of appeals for the ninth circuit, and that such other and further proceedings may be had as may be proper in the premises.

52 The court having duly considered the same, does hereby allow the said writ of error prayed for, and it is ordered that upon the giving by said defendant, The Mutual Life Insurance Company of New York (a corporation), of a bond according to law, in the sum of sixty-five hundred dollars, the same shall operate as a supersedeas bond and all proceedings be stayed, pending the determination of said writ of error.

Dated this twenty-fourth day of January, 1899.

C. H. HANFORD, *Judge.*

Copy of foregoing order received and service of same acknowledged this twenty-fourth day of January, 1899.

ALLEN & ALLEN,  
*Attorneys for Plaintiff.*

(Endorsed:) Order granting writ of error and fixing amount of bond. Filed Jan. 24, 1899, in the United States circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

WALTER B. ALLEN, as Administrator of the Estate of  
Samuel B. Stewart, Deceased, Plaintiff,

*vs.*

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK  
(a Corporation), Defendant.

No. 654.

53

*Supersedeas Bond.*

Know all men by these presents, that we, The Mutual Life Insurance Company of a New York (a corporation), the above-named defendant, as principal, and E. C. Neufelder and L. Turner, of King county, Washington, as sureties, are held and firmly bound unto Walter B. Allen, as administrator of the estate of Samuel B. Stewart (deceased), the above named plaintiff, in the sum of six thousand five hundred dollars, to be paid to said plaintiff, his executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this twenty-fourth day of January, 1899.

The condition of the above obligation is such that whereas in the above court and cause, final judgment was rendered against the

said defendant and in favor of said plaintiff, in the sum of five thousand and ninety one-hundredths dollars, with interest and costs; and

Whereas, the said defendant has obtained from said court a writ of error to reverse the judgment in said action, and a citation directed to the plaintiff is about to be issued, citing and admonishing him to be and appear in the United States circuit court of appeals for the ninth circuit, to be held at San Francisco, in the State of California:

Now, therefore, if the said defendant, The Mutual Life Insurance Company (a corporation), of New York, shall prosecute the said writ of error to effect, and shall answer all damages and costs that may be awarded against it if it fails to make its plea good, then the above obligation is to be void, otherwise to remain in full force and effect.

THE MUTUAL LIFE INSURANCE CO. OF  
NEW YORK, [SEAL.]  
By SHERWOOD GILLESPIE,  
*Its General Agent for the State of Washington,*  
And by STRUVE, ALLEN, HUGHES & McMICKEN,  
*Its Attorneys.*  
E. C. NEUFELDER. [SEAL.]  
L. TURNER. [SEAL.]

[50-ct. revenue stamp affixed and canceled.]

UNITED STATES OF AMERICA, }  
*District of Washington, Northern Division, King County,* } ss:

E. C. Neufelder and L. Turner, sureties on the foregoing bond, being each duly sworn, each for himself deposes and says: That he is a freeholder in said district, and that he, the said E. C. Neufelder, is worth the sum of six thousand five hundred dollars; that he, the said L. Turner, is worth the sum of six thousand five hundred dollars; and in each case exclusive of property exempt from execution, and over and above all debts and liabilities.

E. C. NEUFELDER.  
L. TURNER.

55 Subscribed and sworn to before me this twenty-fourth day of January, one thousand eight hundred and ninety-five.

JAMES KIEFER,  
*United States Commissioner.*

[Seal of U. S. Com'r.]

[10c. revenue stamp affixed and canceled.]

The sufficiency of the sureties of the foregoing bond approved by me this twenty-fourth day of January, 1899.

C. H. HANFORD,  
*Judge of said Court.*

Copy of foregoing bond received and service of same acknowledged this twenty-fourth day of January, 1899.

ALLEN & ALLEN,  
*Attorneys for Plaintiff.*

(Endorsed :) Supersedeas bond. Filed Jan. 24, 1899, in the United States circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

*Writ of Error (Copy).*

UNITED STATES OF AMERICA, ss :

The President of the United States of America to the judges of the circuit court of the United States for the district of Washington, northern division, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said circuit court before you, or some of you, between Walter B. Allen, as administrator of the estate of Samuel B. Stewart, deceased, and The Mutual Life Insurance Company of New York, defendant, a manifest error hath happened to the great damage of the said The Mutual Life Insurance Company of New York (a corporation), defendant, as is said and appears by the complaint; we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf do command you, if any judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justice of the United States circuit court of appeals for the ninth circuit, at the court-rooms of said court in the city of San Francisco, in the State of California, together with this writ, so that you have the same at the said place before the justice aforesaid, on the twenty-first day of February, 1899, that the record and proceedings aforesaid being inspected, the said justice of the said circuit court of appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

A. REEVES AYRES,  
*Clerk of said Circuit Court of the United States  
for the Ninth Circuit, District of Washington,*  
By H. M. WALTHER, Deputy.

[Seal U. S. Circuit Ct.]

57 The foregoing writ is hereby allowed.

C. H. HANFORD,  
*United States District Judge for the District of Washington,  
Sitting as Judge of said Circuit Court of the United States  
for the Ninth Circuit, District of Washington.*

[Seal U. S. Circuit Ct.]

Received this twenty-fourth day of January, 1899, a true copy of the foregoing writ of error, for defendant in error, Walter B. Allen, as administrator of the estate of Samuel B. Stewart (deceased).

A. REEVES AYRES,

*Clerk of the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division.*

By H. M. WALTHER, Deputy.

[Seal U. S. Circuit Ct.]

(Endorsed :) Writ of error. Filed Jan. 24, 1899, in the United States circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

*Citation (Copy).*

UNITED STATES OF AMERICA, ss :

To Walter B. Allen, as administrator of the estate of Samuel B. Stewart, deceased, Greeting :

You are hereby cited and admonished to be and appear at a term of the United States circuit court of appeals for the ninth circuit, to be holden in the city of San Francisco, State of California, on the twenty-first day of February, 1899, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of the State of Washington, northern division, wherein The Mutual Life Insurance Company of New York (a corporation) is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated the twenty-fourth day of January, 1899.

C. H. HANFORD,

*United States District Judge for the District of Washington,  
Sitting as Judge of said Circuit Court of the United States  
for the Ninth Circuit, District of Washington.*

[Seal U. S. Circuit Ct.]

Attest :

A. REEVES AYRES,

*Clerk of said Circuit Court of the United States for  
the Ninth Circuit, District of Washington,*

By H. M. WALTHER, Deputy.

We hereby, this twenty-fourth day of January, 1899, acknowledge service of the foregoing citation at Seattle, Washington.

ALLEN & ALLEN,

*Counsel for Walter B. Allen, as Administrator of the  
Estate of Samuel B. Stewart, Deceased.*

(Endorsed :) Citation. Filed Jan. 24, 1899, in the United States circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.



9 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

|   |            |
|---|------------|
| WALTER B. ALLEN, as Administrator of the Estate of<br>Samuel B. Stewart, Deceased, Plaintiff, | } No. 639. |
| vs.   |            |
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW<br>York (a Corporation), Defendant.                  | }          |

*Præcipe for Record.*

To the clerk of the above-named court:

In your return to the writ of error issued out of the circuit court of appeals for the ninth circuit, to the above-named circuit court of the United States, you will please include the following:

- (1.) Complaint, filed December 28, 1897.
- (2.) Præcipe for appearance of attorneys for plaintiff, filed December 28, 1897.
- (3.) Præcipe for appearance of attorneys for defendant, filed January 29, 1898.
- (4.) Answer, filed January 29, 1898.
- (5.) Demurrer to respective first affirmative defenses in answer, filed February 9, 1898.
- (6.) Opinion on demurrer, filed May 28, 1898.
- (7.) Demurrer to respective second affirmative defenses in answer, filed December 22, 1898.
- 60 (8.) Judgment, filed December 31, 1898.
- (9.) Assignment of errors, filed January 24, 1899.
- (10.) Petition for writ of error, filed January 24, 1899.
- (11.) Order fixing amount of supersedeas bond, filed January 24, 1899.
- (12.) Supersedeas bond, filed January 24, 1899.
- (13.) Writ of error, filed January 24, 1899.
- (14.) Copy of writ of error lodged with clerk for defendant in error, filed January 24, 1899.
- (15.) Citation, with acknowledgment of service, filed January 24, 1899.

STRUVE, ALLEN, HUGHES & McMICKEN,

*Attorneys for Defendant.*

(Endorsed :) Præcipe for record. Filed in the United States circuit court, district of Washington, Feb. 15, 1899. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division.

|   |            |
|---|------------|
| WALTER B. ALLEN, as Administrator of the Estate of<br>Samuel B. Stewart, Deceased, Plaintiff, | } No. 654. |
| <i>vs.</i>  |            |
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK<br>(a Corporation), Defendant.                  | }          |

61 *Clerk's Certificate to Transcript.*

UNITED STATES OF AMERICA, }  
District of Washington, } *ss :*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, do hereby certify that the foregoing fifty-one (51) typewritten pages, numbered from one (1) to fifty-one (51), both inclusive, constitute and are a complete, true, and correct copy of the record, papers and all proceedings had in the foregoing-entitled cause as the same remains of record and on file in the office of said circuit court, and that the same, which I transmit, constitutes my return to the annexed writ of error lodged and filed in my office on the twenty-fourth day of January, 1899. I also hereto annex and herewith transmit the original citation in said cause.

I further certify that no other opinion of the court than the one hereinbefore set forth was rendered or filed in said cause.

I further certify that the costs of preparing and certifying the foregoing transcript of record and return is the sum of \$15.65, and that the same has been paid me in full by Struve, Allen, Hughes & McMicken, attorneys for the plaintiff in error.

62 In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court this seventeenth day of February, 1899.

A. REEVES AYRES,  
*Clerk of the United States Circuit Court of the District of  
Washington, Ninth Circuit,*

[SEAL.]

By R. M. HOPKINS, *Deputy Clerk.*

[Cancelled 10-c. int. rev. stamp.]

*Writ of Error (Original).*

UNITED STATES OF AMERICA, *ss :*

The President of the United States of America to the judges of the circuit court of the United States for the district of Washington, northern division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said circuit court before you, or some of you, between Walter B. Allen, as administrator of the estate of Samuel B. Stewart, deceased, and The Mutual Life In-

63 insurance Company of New York, defendant, a manifest error hath happened, to the great damage of the said The Mutual Life Insurance Company of New York (a corporation), defendant, as is said and appears by the complaint; we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if any judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the justice of the United States circuit court of appeals for the ninth circuit, at the court-rooms of said court in the city of San Francisco, in the State of California, together with this writ, so that you have the same at the said place before the justice aforesaid, on the twenty first day of February, 1899.

That the record and proceedings aforesaid being inspected, the said justice of the said circuit court of appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

A. REEVES AYRES,

*Clerk of said Circuit Court of the United States for the Ninth Circuit, District of Washington,*

[SEAL.]

By H. M. WALTHER, Deputy.

The foregoing writ is hereby allowed.

C. H. HANFORD,

*United States District Judge for the District of Washington,  
Sitting as Judge of said Circuit Court of the United States  
for the Ninth Circuit, District of Washington.*

[SEAL.]

64 Received this twenty-fourth day of January, 1899, a true copy of the foregoing writ of error, for defendant in error, Walter B. Allen, as administrator of the estate of Samuel B. Stewart, deceased.

A. REEVES AYRES,

*Clerk of the Circuit Court of the United States for the Ninth Circuit, District of Washington, Northern Division,*

[SEAL.]

By H. M. WALTHER, Deputy.

(Endorsed:) Original. No. —. In the United States circuit court of appeal, ninth circuit. The Mutual Life Insurance Company of New York (a corporation), plaintiff in error, vs. Walter B. Allen, as administrator, etc., defendant in error. Writ of error. Filed Jan. 24, 1899, in the United States circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

*Citation (Original).*

UNITED STATES OF AMERICA, ss.:

To Walter B. Allen, as administrator of the estate of Samuel B. Stewart (deceased), Greeting :

You are hereby cited and admonished to be and appear at a term of the United States circuit court of appeals for the ninth circuit, to be holden in the city of San Francisco, State of California, on the twenty-first day of February, 1899, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States  
 65 for the district of the State of Washington, northern division, wherein The Mutual Life Insurance Company of New York (a corporation), is plaintiff in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated the twenty-fourth day of January, 1899.

C. H. HANFORD,

*United States District Judge for the District of Washington,  
 Sitting as Judge of said Circuit Court of the United States  
 for the Ninth Circuit, District of Washington.*

Attest :

[SEAL.]

A. REEVES AYRES,

*Clerk of said Circuit Court of the United States for the  
 Ninth Circuit, District of Washington.*

By H. M. WALTHIEW, Deputy.

We hereby this twenty-fourth day of January, 1899, acknowledge service of the foregoing citation at Seattle, Washington.

ALLEN & ALLEN,

*Counsel for Walter B. Allen, as Administrator  
 of the Estate of Samuel B. Stewart, Deceased.*

(Endorsed :) Original. No. —. In the United States circuit court of appeals, ninth circuit. The Mutual Life Insurance Company of New York (a corporation), plaintiff in error, vs. Walter B.  
 66 Allen, as administrator, etc., defendant in error. Citation. Filed Jan. 24, 1899, in the United States circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

(Endorsed :) No. 519, in the United States circuit court of appeals for the ninth circuit. Mutual Life Insurance Company of New York (a corporation), plaintiff in error, vs. Walter B. Allen, as administrator of the estate of Samuel B. Stewart (deceased), defendant in error. In error to the circuit court of the United States for the district of Washington, northern division. Transcript of record. Filed February 20, 1899. F. D. Monckton, clerk, by Meredith Sawyer, deputy clerk.

At a stated term, to wit, the October term, A. D. 1898, of the United States circuit court of appeals, for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Wednesday, the seventeenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

67 THE MUTUAL LIFE INSURANCE COMPANY OF NEW  
York (a Corporation) } No. 519.  
vs.  
WALTER B. ALLEN, as Administrator, etc. }

*Order of Submission.*

By stipulation of counsel, ordered cause submitted to the court for consideration and decision on briefs.

In the United States Circuit Court of Appeals, Ninth Circuit. \*

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK  
(a Corporation), Plaintiff in Error, } No. 519.  
vs.  
WALTER B. ALLEN, as Administrator of the Estate of  
Samuel B. Stewart, Deceased, Defendant in Error. }

*Opinion U. S. Circuit Court of Appeals.*

In error to the circuit court of the United States for the district of Washington, northern division.

Edward Lyman Short, John B. Allen and R. C. Strudwick, for plaintiff in error; Struve, Allen, Hughes & McMicken, and Strudwick & Peters, of counsel.

Allen & Allen, for defendant in error.

68 Before Gilbert and Ross, circuit judges, and Hawley, district judge.

HAWLEY, *District Judge*:

This is an action brought upon two policies of insurance on the life of Samuel B. Stewart, each for the sum of \$2,500. One premium was paid on each policy when delivered. No other premiums were ever paid. The pleadings in this case, as to forfeiture, are similar to the case of *The Mutual Life Insurance Company v. Sears, ante*. The court sustained a demurrer to the answer and rendered judgment in favor of defendant in error for \$5,091, with interest and costs. Upon the legal principles announced in *The Mutual Life Insurance Company v. Hill, ante*, and authorities there cited, the judgment of the circuit court is affirmed, with costs.

(Endorsed :) Opinion. Filed October 2, 1899. F. D. Monckton, clerk.

69 United States Circuit Court of Appeals for the Ninth Circuit,  
October Term, 1899.

|  |            |
|--|------------|
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK<br>(a Corporation), Plaintiff in Error,                  | } No. 519. |
| <i>vs.</i>   |            |
| WALTER B. ALLEN, as Administrator of the Estate of<br>Samuel B. Stewart, Deceased, Defendant in Error. | }          |

*Judgment U. S. Circuit Court of Appeals.*

In error to the circuit court of the United States for the district of Washington, northern division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Washington, northern division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed, with costs.

(Endorsed :) Judgment. Filed Oct. 2, 1899. F. D. Monckton, clerk.

70 At a stated term, to wit, the October term, A. D. 1899, of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Monday, the ninth day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

|  |            |
|--|------------|
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK<br>(a Corporation) | } No. 519. |
| <i>vs.</i>   |            |
| WALTER B. ALLEN, as Administrator, etc.                          | }          |

*Order Staying Mandate.*

Upon motion of Warren Gregory, Esquire, ordered mandate herein stayed until the further order of the court.

71 United States Circuit Court of Appeals for the Ninth Circuit.

|   |            |
|---|------------|
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK<br>(a Corporation), Plaintiff in Error,                         | } No. 519. |
| vs.<br>WALTER B. ALLEN, as Administrator of the Estate<br>of Samuel B. Stewart, Deceased, Defendant in Error. |            |

*Clerk's Certificate to Transcript, United States Circuit Court of Appeals.*

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing seventy (70) pages, numbered from one (1) to seventy (70), inclusive, to be a full, true and correct copy of the transcript of the record, the order of submission, the opinion, the judgment, and the order staying mandate in the above-entitled cause, as the originals thereof remain and appear of record in my office, and that the same together constitutes a copy of the entire record of the case in said United States circuit court of appeals for the ninth circuit.

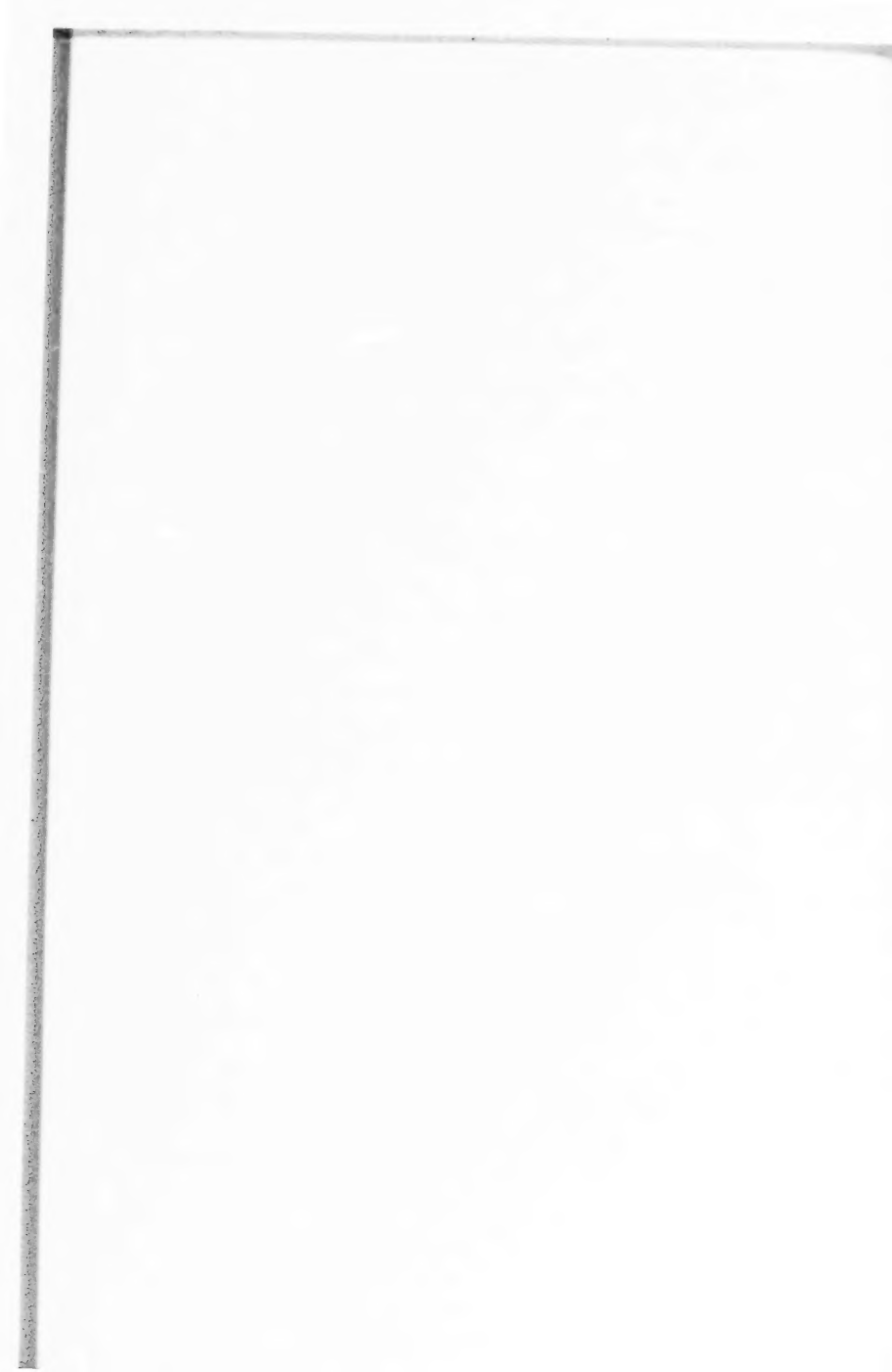
Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this fourteenth day of October, A. D. 1899.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Oct. 14, '99. F. D. M.]





## 72 UNITED STATES OF AMERICA, ss :

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting :

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The Mutual Life Insurance Company of New York is plaintiff in error and Walter B. Allen, as administrator of the estate of Samuel B. Stewart, deceased, is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Washington, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the sixth day of February, in the year of our Lord one thousand nine hundred,

JAMES H. MCKENNEY,

*Clerk of the Supreme Court of the United States.*

[Endorsed :] Supreme Court of the United States. No. 455, October term, 1899. The Mutual Life Ins. Co. of New York vs. Walter B. Allen, adm'r, &c. Writ of certiorari. Filed Feb. 15, 1900. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

|  |            |
|--|------------|
| THE MUTUAL LIFE INSURANCE COMPANY, Petitioner and  | } No. 519. |
| Plaintiff in Error,                                |            |
| <i>vs.</i>   |            |
| WALTER B. ALLEN, as Administrator of the Estate of | }          |
| Samuel B. Stewart, Deceased.                       |            |

*Stipulation as to Return to the Writ of Certiorari.*

It is, this 17th day of February, A. D. 1900, stipulated by and between the attorneys of record for the parties in the above-entitled cause that the certified transcript of the record of said cause, heretofore submitted to the Supreme Court of the United States with the petition for a writ of certiorari, may be filed in the said Supreme Court, and may be received and considered by that court as the transcript of the record in said cause as though the same had been

returned by the clerk of the circuit court of appeals for the ninth circuit in obedience to the writ of certiorari granted February 6th, 1900.

STRUVE, ALLEN, HUGHES & McMICKEN,  
*Attorneys for Petitioner and Plaintiff in Error.*  
 JOHN H. ALLEN,  
 JAY C. ALLEN,  
 ALLEN & ALLEN,  
*Attorneys for Respondent and Defendant in Error.*

(Endorsed :) Stipulation as to return to writ of certiorari. Filed Feb. 20, 1900. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the next preceding page to be a full, true, and correct copy of a stipulation entered into between the respective counsel, filed in the cause entitled The Mutual Life Insurance Company of New York, a corporation, plaintiff in error, v. Walter B. Allen, as administrator, etc., defendant in error, No. 519, as the original thereof remains of record in my office.

Attest my hand and the seal of said  
 Seal United States Circuit Court of Appeals, Ninth Circuit. United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 23d day of February, A. D. 1900.

F. D. MONCKTON, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled Feb. 23, 1900. F. D. M.]

United States Circuit Court of Appeals for the Ninth Circuit.

|  |   |          |
|--|---|----------|
| THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,     | } | No. 519. |
| a Corporation, Plaintiff in Error,                 |   |          |
| v.   |   |          |
| WALTER B. ALLEN, as Administrator of the Estate of | } |          |
| Samuel B. Stewart, Deceased, Defendant in Error.   |   |          |

*Return to Writ of Certiorari.*

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, in obedience to the foregoing writ of certiorari, issued out of the Supreme Court of the United States and addressed to the honorable judges of the United States circuit court of appeals for the ninth circuit, commanding them to transmit to the said Supreme Court the record and proceedings in the above-

entitled cause, do hereby attach to the said writ a certified copy of a stipulation entered into between the attorneys of record for the several parties in said cause on the 17th day of February, 1900, the original of which stipulation has been heretofore filed in this court, and do make the same my return to said writ.

Seal United States Circuit Court of Appeals,  
Ninth Circuit.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 23d day of February, A. D. 1900.

F. D. MONCKTON, *Clerk*.

[Ten-cent U. S. internal-revenue stamp, canceled Feb. 23, 1900. F. D. M.]

[Endorsed:] Case No. 17,569. Supreme Court U. S., October term, 1899. Term No., 455. The Mutual Life Ins. Co. of New York vs. Walter B. Allen, adm'r, &c. Writ of certiorari & return thereto. Office Supreme Court U. S. Filed Mar. 10, 1900. James H. McKenney, clerk.